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ture v. *Meyers,* (Colo.), 77 Pac. Rep. 372, and cases cited therein. The authorities touching the right of a governor to remove state or county officers without judicial review are not in point in this case, because there is no contract between governor and officer. Moreover, not all the cases give the governor this right. *Dullan* v. *Willson,* 53 Mich. 392. Contra: *Territory of Dak.* v. *Cox,* 6 Dak. 501.

CORPORATIONS—LIABILITY OF DIRECTORS FOR EXCESSIVE INDEBTEDNESS.—Action by a single creditor to enforce the liability of the directors of a corporation under a statute providing that "no debts shall be contracted by the corporation exceeding in amount two-thirds of the capital actually paid in; and a director assenting to the creation of an indebtedness exceeding such amount, shall be personally liable for the excess." Demurrer by defendants on the grounds (1) that all the creditors in excess were not joined as plaintiffs, and (2) that the remedy, if any, was in equity, and not at law. *Held:* (1) that each creditor in excess must sue alone, and is entitled to what he recovers; (2) that the liability is original, enforceable by an action at law. *Hilliard* v. *Lyman et al.* (1905), — C. C. D. Vt. —, 138 Fed. Rep. 469.

The only case cited in the opinion is *Windham Provident Institution* v. *Sprague,* 43 Vt. 502. The decision in *Horner* v. *Henning et al.,* 93 U. S. 228, 23 L. Ed. 879, was not referred to. In that case, in construing a similar statute, the Supreme Court held: (1) that the remedy is in equity; (2) that the excess constitutes a fund for the benefit of all creditors in excess, and, therefore, that a suit could not be maintained by a single creditor. To the same effect are *Stone* v. *Chisolm,* 113 U. S. 302, 28 L. Ed. 993, 5 S. Ct. 197; *Winchester* v. *Mabury,* 122 Cal. 522, 55 Pac. 393; *Woolverton et al.* v. *Taylor et al.,* 132 Ill. 197, 22 Am. St. Rep. 527, 23 N. E. 1009; *Whitney* v. *Wilcox et al.,* 58 App. Div. (N. Y.) 57; *Tradesman Pub. Co.* v. *Car Wheel Co.,* 95 Tenn. 634, 32 S. W. 1097. In these cases, however, the liability was "to the creditors of the corporation," while the act construed in the principal case merely provided for "a liability for the excess," without saying to whom, and the court evidently construed this as meaning a liability only to the creditors in excess. For a consideration of this distinction see the opinion of Judge O'Brien in *National Bk.* v. *Dillingham,* 147 N. Y. 603, 49 Am. St. Rep. 697, 42 N. E. 340. See also, THOMPSON ON CORPORATIONS §§ 4264, 4265.

CRIMINAL LAW—LARCENY DISTINGUISHED FROM FALSE PRETENSES.—The defendant agreed to buy a house for the prosecutrix, an intimate relative, and completed the purchase of one from Stalford. Stalford gave the defend ant a bill of sale which purported to transfer the house from Stalford to the prosecutrix. The price was $90. The defendant told the prosecutrix that the price was $500. The prosecutrix gave the defendant that amount of money, and she converted it, with the exception of $90 paid by her to Stalford, to her own use. *Held,* that she was properly charged with larceny, but judgment of conviction was reversed for wrongful exclusion of evidence. *People* v. *Delbos* (1905), — Cal. —, 81 Pac. Rep. 131.

The case is interesting because it shows how difficult it may be to apply

a clean-cut rule of law to given facts. The distinction between larceny and false pretenses is this: where the owner of the property takes means to pass title to the person taking it, the taking, if wrongful, is false pretenses; but where the owner does not intend to give ownership to the person taking the property, the crime, if any, is larceny. *Reg.* v. *Solomons,* 17 Cox Crim. Cas. 93. Four judges held that the prosecutrix meant to pass title, while three were of opinion that she did not intend to do so, when she intrusted to the defendant the alleged purchase-price of the house. The majority therefore held, in answer to the objection that the verdict was unsupported by evidence of this intention, that the facts did warrant the verdict.

CRIMINAL LAW—REMARKS OF DISTRICT ATTORNEY—APPEALS TO RACE PREJUDICE.—The prosecuting witness and the jury in this case were white; the defendants negroes. The district attorney in his argument referred to the prosecuting witness as a "creole fellow in blood." Objection to the words being made, the district attorney apologized and asked the jury to disregard his slip and asked the Court to charge the jury upon the matter, which it did. *Held,* that the reference, is in the nature of an appeal to race prejudice, and as such, in view of the peculiar racial conditions in this state of which the court takes judicial cognizance is calculated to unduly influence the jury and vitiates the verdict. *State* v. *Bessa et al.* (1905), — La. —, 38 So. Rep. 985.

This case follows *State* v. *Robinson,* 112 La. 939, where a new trial was ordered because the district attorney commented on the fact that the accused had failed to testify, even though the judge instructed the jury to dismiss the comment from their minds. The Louisiana holding is peculiar inasmuch as the prompt sustaining of an objection to objectionable words and retraction by the attorney will not cure the defect. This seems an extreme view for it is generally held that if the court checks counsel when objection is made and instructs the jury to disregard the improper statements, there can be no available error. 2 ELLIOT PLEADING AND PRACTICE p. 692, *Bradshaw* v. *State,* 17 Nebr. 147; *McLain* v. *State,* 18 Nebr. 154; *Randall* v. *State,* 132 Ind. 539; *Jenkins, Admx.* v. *The N. C. Ore Dressing Co.,* 65 N. C. 563. There are many cases, indeed, where reversals have been had for improper remarks of counsel in argument but it will always be found that objection to the remark was overruled, and the implication is always fair, that no appeal would have been entertained but for this error. *State* v. *Smith,* 75 N. C. 306; *People* v. *Dane,* 59 Mich. 550; *Jones* v. *State* (Ga.) 51 S. E. 312; *Hamilton* v. *State,* 97 Tenn. 452; *Ivey* v. *State,* 113 Ga. 1062. See also 11 AM. CRIM. REP. 114; *Tucker* v. *Henniker,* 41 Ga. 317.

Nevertheless the decision in the principal case seems quite defensible on principle as it certainly is the duty of the prosecuting attorney to see that the accused shall have a fair and impartial trial; it is also interesting as indicating the desire of the Louisiana court to afford every one equal protection.

DAMAGES—PROPER AVERMENT IN AN ACTION FOR DECEIT IN THE SALE OF REALTY.—The declaration alleged the plaintiffs purchased the "Old Murphy